

MEMORANDUM OF LAW

DATE: June 5, 1990

TO: Retirement Board of Administration, via Larry
Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: Ursula Krahn Hearing

At the April 20, 1990, monthly meeting of the Retirement Board of Administration (the Board), Mr. Joel Klevens, Attorney at Law, petitioned the Board to grant a 100 percent continuation of benefits to Ursula Krahn, the widow of retiree William J. Krahn, based on an alleged misrepresentation contained in a member handbook dated July 1, 1971, and republished in a certificate letter dated April 26, 1973.

In his presentation, Mr. Klevens relied in part on a Memorandum of Law dated September 14, 1989, by Mr. Jack Katz, Senior Chief Deputy City Attorney, advising the Board to provide a 50 percent continuation benefit to the surviving spouses of certain listed individuals who retired prior to July 1, 1973, because of a different but clear misrepresentation in the member's handbook and the individual certificate letters. The error the documents contained concerned the effective vesting date of the 50 percent continuation spousal benefit under San Diego Municipal Code (SDMC) section 24.0521. It should be noted, however, that the level of benefit was specifically set forth in the SDMC, albeit effective July 1, 1973. Mr. Klevens argued that the Board should also be estopped from denying Mrs. Krahn's claim because the alleged misrepresentation concerning the 100 percent spousal continuation is also found in the handbook and certificate letter. Mr. Klevens cited several cases including *Crumpler v. Board of Administration*, 32 Cal. App. 3d 567 (1973), where the court held that the Board of Administration of the Public Employees' Retirement System was estopped from reclassifying certain employees nunc pro tunc from the date of an erroneous classification to the date the impropriety of the original classification was determined.

The matter was then continued in order for the City Attorney to respond to Mr. Klevens' position that the facts support a case of estoppel and that the appropriate legal remedy is the award to Mrs. Krahn of a 100 percent spousal continuation benefit instead of the legally authorized 50 percent spousal continuation benefit contained in SDMC section 24.0521.

As we begin our analysis, it is helpful to distinguish Mrs. Krahn's claim from those addressed in the September 14, 1989 Memorandum of Law. Mrs. Krahn is requesting a benefit not found in the City Charter nor anywhere else in the SDMC. In the other cases, the issue was not the existence of a certain level of benefit but the individual's eligibility for a specific statutory benefit. Mr. Katz correctly advised the Board that because the City's conduct may have caused those former employees to rely upon and select a retirement date occurring before the benefit vested, the Board could not disqualify those same former employees from receiving that retirement benefit on the sole basis that the employees were ineligible because they chose an earlier retirement date. Mr. Klevens' position that the doctrine of estoppel requires that Mrs. Krahn receive a 100 percent continuation of the retirement benefit received by her spouse from the City Employees' Retirement System (CERS), even though such benefit is not authorized by the City Charter nor the SDMC, extends the doctrine of estoppel beyond the issue addressed in Mr. Katz's Memorandum of Law.

In a case decided shortly after the decision in Crumpler, the court, in discussing the appropriate statute of limitations in an action involving a similar misrepresentation of disability benefits in an employee booklet, stated the following:

A preliminary issue, then, is whether plaintiff's claim was one for "money or benefits under" a public retirement or pension system. Plaintiff argues that her claim was actually made pursuant to The Plan - as she understood it to be. The Plan, however, never contained the provisions set forth in the booklet, but only a severely limited version of them. Plaintiff's claim is grounded upon the doctrine of estoppel. The written promise upon which she relied was not in The Plan but was contained in a separate document, the booklet. This is the essence of her claim. In our view, plaintiff was not suing for benefits payable pursuant to or under a public pension system, and thus Government Code

section 905, subdivision (f), is not applicable (emphasis added).

We must look, therefore, to Government Code section 911.2 as the applicable statute. . . .

Therefore, plaintiff's estoppel claim fell

within the second clause of Government Code section 911.2, providing for a year's limitation on a claim "relating to any other cause of action" (than death or injury).

Baillargeon v. Department of Water & Power, 69 Cal. App. 3d 670, 681, 682 (1977).

Clearly, the relief currently sought by Mrs. Krahn is the award of a retirement benefit not authorized by the City Charter nor by any ordinance. Section 144 of the City Charter precludes the Board from awarding any retirement benefit not authorized by the City Charter or SDMC and directs the Auditor and Comptroller to refuse to allow for such payment. Any action to do so by the Board would be void as an ultra vires act because there is no provision under the City Charter or SDMC authorizing such payment by CERS. County of San Diego v. Cal. Water Etc. Co., 30 Cal. 2d 817, 825 (1947). Longshore v. County of Ventura, 25 Cal. 3d 14 (1979). Fleice v. Chualar Union Elementary School Dist., 206 Cal. App. 3d 886 (1988).

This Memorandum of Law does not attempt to reach the merits of Mrs. Krahn's claim nor should it because the Board lacks the power to grant the specified relief. Mrs. Krahn's claim is in the nature of a contract or tort claim in accordance with the view expressed by the court in Baillargeon. The Board clearly lacks jurisdiction in this matter and therefore should take no action except to deny the appeal without prejudice as to any other possible cause of action Mrs. Krahn may or may not have against The City of San Diego.

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By

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